

## Procurement & Property Division Policy Memorandum

Subject: <b>Acquisition of EIT Products and Services</b>			Number: 39-02
Distribution: ARS (AAO's) CSREES ERS NASS FD PPD CO's	Date:  September 28, 2001	This Replaces: N/A	

### 1. Policy

Electronic and Information Technology (EIT) products and services developed, procured, and maintained by the agency shall be compliant with Section 508, of the Rehabilitation Act of 1973, unless the products or services meet an applicable exception (Section 4).

REE program and procurement personnel shall ensure that acquired EIT products and services provide employees with disabilities access to and use of information or data that is comparable to the access and use of information or data by employees without disabilities, unless the product or service meets an exception.

REE Requiring Program Officials must develop and provide documentation to the contracting activity supporting undue burden, unavailability, Federal Acquisition Regulation applicability, 508 compliance, and EIT standard determinations.

---

### 2. Definitions

Accessibility - an EIT system or service can be used in a variety of ways without reliance on a single sense or ability.

Alternative Means – after determining that a proposed EIT product or service will impose an undue burden to the agency, the agency has a responsibility to provide the information and data to individuals with disabilities by an alternative means of

access; alternative means of access focuses on the provision of the information and data in an accessible manner – as opposed to the accessibility of the product or service itself.

Assistive Technology – any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities; adaptive equipment that people with disabilities commonly use for information and communication access.

Comparable Assess – unless an exception applies, an agency’s obligation to provide comparable access under Section 508 is satisfied by acquiring EIT that meets the applicable technical provisions either directly or through equivalent facilitation. Comparable assess is not required if it would impose an undue burden on the agency.

Delivery/Task Orders – individual orders made under Indefinite Delivery Indefinite Quantity (IDIQ) contracts (i.e., Federal Supply Schedules (FSS), Governmentwide Agency Contracts (GWAC) for services or supplies.

Electronic Information Technology (EIT) – as defined at FAR 2.101, and any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information. In addition to Information Technology (IT), EIT includes:

Telecommunication products, such as:

- Telephones,
- Information kiosks,
- Transaction machines,
- World Wide Websites,
- Multimedia (including videotapes), and
- Office equipment, such as copiers and fax machines.

EIT Products - examples of EIT products include computers and peripherals, telephones, fax machines, copiers, and other commonly used office electronic and communication devices.

EIT Services – examples of EIT services are “Seat Management” and “Help Desk” support contracts. See definitions for explanations of these terms.

Equivalent Facilitation – designs or technologies that do not meet the applicable technical provisions in Section 508 but provide substantially equivalent or greater access to and use of a product for people with disabilities.

Help Desk Services (EIT services) – agencies acquiring Help Desks must ensure that providers are capable of accommodating the communications needs of persons with disabilities.

Requiring Program Official – an official in the program office or organization that is funding and acquiring the EIT. (This is usually the fundholder).

Seat Management Contract (EIT services) – under Seat Management arrangements, contractors provide the software, hardware, and technical support services necessary to support full service desktop computing resources to the agency for a given period of time. Although the agency does not acquire the title to the hardware and software, the agency needs to comply with Section 508 in acquiring desktop computing resources.

Unavailability – refers to circumstances where no commercial items are available that meet the applicable EIT technical standards (directly or through equivalent facilitation) in time to satisfy the agency’s delivery requirements.

Undue Burden – an undue burden is a significant difficulty or expense to an agency. To determine if an EIT product or service imposes an undue burden, an agency must consider all resources available to its program or component for which the supply or service is being acquired.

---

### **3. Background**

Section 508 of the Rehabilitation Act Amendments of 1998, prohibits Federal agencies, with only limited exceptions, from developing, purchasing, using, or maintaining EIT products or services that are inaccessible to individuals with disabilities. The purpose of the Amendment to the Rehabilitation Act of 1973 is to ensure access for persons with disabilities to EIT. Compliant EIT will accommodate the use of assistive technology.

Through Section 508, the Federal Government intends to use its leverage as the world’s largest consumer of EIT to push EIT industries to design products that are accessible to individuals with disabilities. Specifically, Section 508 is intended to increase the disabled sector’s productivity and remove the barriers in employment and advancement within the Federal workforce and in the private sector.

---

### **4. Enforcement**

On December 21, 2000, the final rule for Section 508 was issued in the Federal Register (36 CFR Part 1194). On April 25, 2001, the Federal

Acquisition Regulation (FAR) Council issued its final rule for incorporating Section 508 requirements and accessibility standards in the FAR. As a result of this rule, beginning **June 25, 2001**, Federal agencies which are non-compliant with its standards may be subject to administrative complaints and lawsuits.

It is the shared responsibility of the Requiring Program Official and Contracting Officer (COs) to ensure that the acquisition of EIT meets applicable technical provisions of the accessibility standards.

---

## **5. Exceptions**

There are a few exceptions to the accessibility standards, Agencies are not required to acquire Section 508 compliant EIT if the following conditions are met:

- a. micro-purchase (purchases \$2,500 or less) made prior to **January 1, 2003** (FAR 39.204(a));
- b. a national security system (FAR 39.204(b) and 36 CFR 1194.3(a);
- c. acquired by a contractor incidental to a contract (FAR 39.204(c) and 36 CFR 1194.3(b));
- d. located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment (FAR 39.204(d) and 36 CFR 1194.3(f)); and
- e. would impose an undue burden on the agency (FAR 39.204(e) and 36 CFR 1194.2).

### **a. Micro-purchase**

This exception is for a one-time purchase that totals \$2,500 or less, made on the open market as opposed to under an existing contract. Software that costs \$1800 is not a micro-purchase if it is part of a \$3,000 purchase - or a \$3,000,000 purchase. Governmentwide commercial purchase cards meet the exception if they are used to conduct an open-market purchase of \$2,500 or less and the action occurs prior to January 1, 2003.

### **b. National Security System**

As defined by the FAR 39.002 a national security system means:

any telecommunications or information system operated by the United States Government, the function, operation, or use of which--

- 1 Involves intelligence activities;
- 2 Involves cryptologic activities related to national security;
- 3 Involves command and control of military forces;
- 4 Involves equipment that is an integral part of a weapon or weapons system; or
- 5 Is critical to the direct fulfillment of military or intelligence missions. This does not include a system that is to be used for routine administrative and business applications, such as payroll, finance, logistics, and personnel management applications.

c. Incidental to a Contract

Section 508 standards only apply to EIT products and services being procured by a Federal agency by contract with private vendors. However, these standards only apply to products and services specified as deliverables under the contract. Section 508 does not apply to a contractor's own internal workplace EIT. Therefore, the contractor's internal workplace EIT is considered incidental to the Federal contract. Provided below is an example:

**Example:** A firm that produces a report for a Federal agency under a contract would not have to procure accessible computers and word processing software even if they were used exclusively for the contract. However, compliance would be required if such EIT products were to become the property of the Federal agency as contract deliverables or if the Federal agency purchased the equipment used by the contractor as part of the project.

d. Back Office

The "back office" exception applies only to EIT which is located in physical spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment. If any services other than maintenance, repair, or occasional monitoring are performed in the physical space, then the back office exception does not apply.

e. Undue Burden

Agencies do not have to acquire EIT that meets the applicable technical provisions if doing so would impose an undue burden on the agency (FAR 39.202, 39.204(e)(1) and 36 CFR 1194.4). Undue burden is a longstanding concept in disability rights law. **An undue burden determination must be applied on a case-by-case basis.** Undue burden cannot be established simply by demonstrating that between products that could meet the agency's need, the price of products that meet the applicable accessibility standards is higher than those that do not. Such an analysis is insufficient since it fails to consider all resources available to the program component.

The FAR also requires that determinations of undue burden be made by Requiring Program Officials and not Contracting Officer's (CO's). The Requiring Program Official must document in writing the basis for an undue burden decision and provide a copy to the CO for inclusion in the contracting file. See FAR 39.204(e). The documentation must clearly explain why meeting the applicable technical provision imposes an undue burden. The law and regulations do not specify the exact content or format of documentation to support an undue burden determination. However, USDA has provided a uniform format of the information to be included in an "undue burden" determination in AGAR Advisory No. 34. This advisory can be found at: <http://www.usda.gov/procurement/policy/advisories.html>

Undue burden does not void the requirement for an agency to provide access. If the requiring program office determines an EIT product creates an undue burden, the program office must identify, document and make readily available the best alternative means to provide the information and data to disabled individuals by an alternative means of access. See the following example:

If any agency wishes to purchase a computer program that generates maps denoting regional demographics, but determines that it would constitute an undue burden to purchase an accessible version of such a program, the agency would be required to make the information provided by the program available by alternative means to users with disabilities. Thus, in the example provided above, alternative means of access for an individual who is blind might mean providing a hard copy description of the information in Braille or providing an assistant to help guide the user through the information.

Alternative means may include, but is not limited to: voice, fax, relay service, TTY, qualified sign language interpreters, Internet posting, captioning, text-to-speech synthesis, readers, personal assistants, or audio descriptions.

f. Unavailability

Unavailability was not mentioned above, but it is another type of exception to the accessibility standards. If products are available that meet some, but not all, applicable provisions, agencies cannot claim a product as a whole is unavailable just because it does not meet all of the applicable technical provisions. *In addition, it is anticipated that as manufacturer offerings of products that meet the applicable accessibility standards increase over time, incidents of unavailability will decrease.* The FAR requires that determinations of unavailability be made by Requiring Program Officials and not CO's. The Requiring Program Official must document unavailability in writing and provide a copy to the contracting activity for inclusion in the contract file. See FAR 39.203(c) and 36 CFR 1194.2(b). The format for documenting unavailability determinations is provided in AGAR Advisory No. 34, available at: <http://www.usda.gov/procurement/policy/advisories.html>.

---

**6. Responsibilities of Contract and Requiring Program Officials**

**6a. CO and Requiring Program Official Responsibilities**

The following chart provides a brief summary of CO's and Requiring Official responsibilities under Section 508:

Type of Purchase/Contract	Compliance Date	Requirements
Micro-purchases  (\$2,500 or less)	January 1, 2003	Micro-purchases are exempt from meeting Section 508 accessibility standards until 2003. Requiring Program Officials, however, are encouraged to comply with these standards immediately. <u>Program Officials must provide to the CO written verification (contractor certification, fax, website info) that the product or service, meet accessibility standards. Reference AGAR Advisory No. 34, available at: <a href="http://www.usda.gov/procurement/policy/advisories">http://www.usda.gov/procurement/policy/advisories</a></u>
Contracts	June 25, 2001	Section 508 Accessibility standards will apply to contracts, other than IDIQ awarded, on or after June 25, 2001. <u>Requiring Program Officials must ensure that requirements include applicable accessibility standards in specifications/statements of work, document findings of market research, EIT compliance, undue burden determinations and/or unavailability determinations as applicable. Reference AGAR Advisory No. 34. CO's must incorporate accessibility compliance clauses in contracts as provided in this section under Solicitations.</u>
IDIQ Contracts, Task Orders, Delivery Orders, Call Orders, etc.	June 25, 2001	Section 508 compliant language must be placed in all IDIQ contracts and orders issued against IDIQ contracts (i.e., task orders, delivery orders) on or after June 25, 2001. <u>Requiring Program Officials must ensure that task/delivery order requirements include applicable accessibility standards in specifications/statements of work, document findings of market research, EIT compliance, and undue burden determinations as applicable. Reference AGAR Advisory No. 34. CO's must incorporate accessibility compliance clauses in IDIQ contracts, task orders, delivery orders, etc. as provided in this section under Solicitations.</u>
Solicitations	June 25, 2001	REE contracting activities shall place the Section 508 Accessibility Compliance and Compliance Details Clauses in all solicitations, task, delivery orders, or call orders issued on or after June 25, 2001. <u>No action is required of Requiring Program Official. (Reference AGAR Advisory No. 34). CO's must incorporate accessibility compliance clauses in all solicitations as provided in this section under Solicitations.</u>

6b. Solicitations

Section 508 applies to contracts, task orders, delivery orders, and call orders awarded after June 25, 2001. However, the FAR Council has not provided standard language which can be included in Government solicitations to instruct potential bidders to comply with Section 508 standards. Therefore, in lieu of the FAR Council developing and issuing such a clause, REE agencies shall use the following clause in all solicitations, task orders, delivery orders, and call orders issued after June 25, 2001.

**Contractor Compliance Clause**

All EIT procured through this contract must meet the applicable accessibility standards at 36 CFR 1194, unless an agency exception to this requirement exists. (36 CFR 1194 implements Section 508 of the Rehabilitation Act of 1973, as amended, and is viewable at <http://www.access-board.gov/sec508/508standards.htm> - PART 1194).

The following standards have been determined to be applicable to this contract:

\_\_\_\_\_ 1194.21 Software applications and operating systems.

\_\_\_\_\_ 1194.22 Web-based intranet and internet information and applications.

\_\_\_\_\_ 1194.23 Telecommunications products.

\_\_\_\_\_ 1194.24 Video and multimedia products.

\_\_\_\_\_ 1194.25 Self contained, closed products.

\_\_\_\_\_ 1194.26 Desktop and portable computers.

“The standards do not require the *installation* of specific accessibility-related software or the attachment of an assistive technology device, but merely require that the EIT be compatible with such software and devices so that it can be made accessible if so required by the agency in the future.”

In addition, contracting activities that award IDIQ contracts must indicate to ordering offices which supplies and services the contractor indicates as compliant and show where the full details of compliance can be found (e.g., vendor's or other exact webpage location). To collect this information from the

vendor REE contracting activities shall include the following clause in proposal preparation instructions:

### **Compliance Details Clause**

“The contractor shall indicate, for each line item in the schedule, whether each product or service is compliant or noncompliant with the accessibility standards at 36 CFR 1194. Further, the proposal must indicate where full details of compliance can be found (e.g., vendor’s website or other exact location.”)

#### **6c. Obtaining Contractor EIT Certification**

Requiring Program Officials can obtain EIT certification data from prospective vendors by providing them a copy of the “Contractor Compliance Clause.” In the latter part of the clause is an area for the Requiring Program Office to identify (check-off) the applicable standards that apply the proposed EIT product or service. This clause should be submitted with each proposed purchase (i.e., micro-purchase, simplified acquisition, contract, delivery/task order) to obtain contractor certification of compliance. Methods of obtaining certification information consist of but are not limited to the following:

- Providing a copy of the market research indicating compliance;
- Requesting written certification from the contractor;
- Obtaining a vendor facsimile containing certification data; or
- Obtaining a copy of the certification data from the contractor web-site

To collect EIT certification data for proposed task or delivery orders against an IDIQ contract (FSS’, GWACs, Blanket Purchase Agreements), Requiring Program Officials should provide vendors a copy of the “Compliance Details Clause.” This clause requests that the vendor indicate whether or not each product or service is compliant and provide details of where compliance can be found. Additionally, the Requiring Program Official may simply request certification data from the vendor for only products or services being considered for purchase by the Government.

---

## **7. Federal Acquisition Regulation**

All REE CO’s shall comply with the following FAR regulations and guidance based upon Section 508:

<b>Requirements</b>	<b>Part 2B</b>	Definition of Words and Terms 2.101 Definitions. Electronic and Information Technology
	<b>Part 7B</b>	Acquisition Planning 1.103 Agency Head Responsibilities
	<b>Part 10B</b>	Market Research 10.001 Policy
	<b>Part 11</b>	Describing Agency Needs 11.002 Policy
	<b>Part 12</b>	Acquisition of Commercial Items 12.202 Market research and description of agency need
	<b>Part 39</b>	Acquisition of Information Technology 39.00 Scope of part. 39.2-Electronic and Information Technology 39.201 Scope of subpart. 39.202 Definition 39.203 Applicability 39.204 Exceptions

- 
- 8. Requiring Program Officials** This policy provides requirements and procedures for all REE Requiring Program Officials to observe when submitting EIT equipment purchase requests to their cognizant contracting activity. The procedures can be found in Section 10 of this policy. Also see Section 5, Exceptions, for additional guidance.
- 
- 9. Equivalent Facilitation** The standards in Section 508 are not intended to prevent the use of designs or technologies as alternatives to those prescribed in the provision provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.
-

**10. Procedures  
for Acquisition of  
EIT Requirements**

10a. Requiring Program Official Procedures

Requiring Program Officials are responsible for ensuring that procurement requests (AD-700 or equivalent) observe the following requirements:

1. Identify what Section 508 standards apply to the requirement.
2. The market research conducted to identify what commercial items, if any meet these standards.
3. Review “Sample Checklist of Standards” to determine if proposed EIT products and services meet applicable standards (AGAR Advisory No. 34).
4. The requiring office’s cognizant Computer Specialist’s input to verify that proposed EIT products meet accessibility standards. Verification shall be documented in or attached to the AD-700. Verification may also include written contractor certification, contractor website data, facsimile, etc.
5. The technical specifications or statement of work (SOW) with input from the cognizant Computer Specialist to meet applicable accessibility standards and submit with AD-700 to cognizant contracting activity; and
6. Provide documentation to support the following determinations and compliance with standards:
  - Undue burden
  - Unavailability
  - Federal Acquisition Regulation (FAR) does not apply
  - Requirements are 508 compliant
  - Sample checklist of standards

See AGAR Advisory No. 34 for appropriate format of each determination.

10b. CO's Responsibilities

COs have the following responsibilities to ensure compliance with Section 508 accessibility standards:

Verify that required documentation is provided with AD-700;

Include appropriate contractor compliance clauses in solicitations, contracts, delivery orders, task orders, etc;

Compliance with Parts 2, 7, 10, 11, 12, 39 and any new provision or regulation of the FAR or the Department regarding the use of Section 508 standards;

Allow contractors flexibility and discretion in meeting accessibility standards to take advantage of innovativeness and/or changes in the technology.

---

## **11. Resources**

GSA, Section 508 Questions and Answers - <http://www.section508.gov/>  
Section 508, Federal Register - <http://www.section508.gov/rules.html>  
Department of Education - <http://ocfo.ed.gov/coninfo/clibrary/software.htm>  
USDA - TARGET Center <http://www.usda.gov:80/oo/target.htm>  
Department of Justice - <http://www.usdoj.gov/crt/508/508home.html>  
AGAR Advisories 34, 34A and 35 - <http://www.usda.gov/procurement/policy/advisories.html>

---

**12. PPD Point of Contact**

Charles Conrad, Procurement Analyst  
Policy Branch, 301-504-1725

/s/

REBECCA CROTWELL  
Acting Director  
Procurement and Property Division